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TRANSCRIPT OF PROCEEDINGS

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

NOV - 5 1993

In the Matter of:

MM DOCKET NO. 93-155

RICHARD BOTT, II  
and  
WESTERN COMMUNICATIONS, INC.  
Blackfoot, Idaho

DATE OF HEARING: October 26, 1993

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
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OFFICE OF THE SECRETARY

-----)  
In re Applications of: )

RICHARD BOTT II )  
and )

WESTERN COMMUNICATIONS, INC. )

Blackfoot, Idaho )  
-----)

MM Docket No. 93-155

The above-entitled matter came on for a hearing pursuant to notice before Administrative Law Judge Arthur I. Steinberg, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Tuesday, October 26, 1993, at 10:00 a.m.

APPEARANCES:

On behalf of Richard Bott II:

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## I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Examination of Richard P. Bott by Judge Steinberg 77, 142, 184				
By Mr. Goldstein		83		
By Mr. Riley			180	
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Mass Media Bureau:				
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Exhibit No. 2 (as specified)	42	45		45
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Exhibit No. 1	63	66		
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Hearing Began: 10:00 a.m.		Hearing Ended: 3:00 p.m.		
Lunch Began: 12:35 p.m.		Lunch Ended: 1:45 p.m.		

## P R O C E E D I N G S

(10:00 a.m.)

1 JUDGE STEINBERG: Okay. We're on the record. This  
2 is the commencement of the hearing in MM Docket No. 93-155  
3 involving an application for the assignment of the  
4 construction permit of unbuilt station KCVI-FM in Blackfoot,  
5 Idaho. Let me have the appearances, please, from Richard Bott  
6 II.

7 MR. RILEY: James P. Riley and Kathleen Victory of  
8 Fletcher, Heald, and Hildreth.

9 JUDGE STEINBERG: And Western Communications, Inc.?

10 MR. OXENFORD: David Oxenford.

11 JUDGE STEINBERG: And the Chief, Mass Media Bureau.

12 MR. GOLDSTEIN: Norman Goldstein and Y. Paulette  
13 Laden.

14 JUDGE STEINBERG: Okay. Before we start the  
15 introduction of exhibits into evidence, is -- are there any  
16 preliminary matters?

17 MR. OXENFORD: Your Honor, I have one. I thought it  
18 best be stated for the record a situation that may occur with  
19 respect to my client. As you know, my client is proposing to  
20 buy the construction permit for KCVI to acquire a station in  
21 this market and has had an application pending for over a year  
22 at this point. We have the right under the contract to  
23 terminate the agreement at any point after 180 days after the  
24 agreement was signed, which is -- has long since passed.

1           My client is actively in negotiation presently with  
2 an owner of another station in that market. No contract has  
3 been signed yet, but documents have been exchanged and if  
4 there's no resolution to this hearing in the very near future,  
5 it's quite possible that we will be signing an agreement to  
6 buy another station which means we would have to withdraw from  
7 this application.

8           JUDGE STEINBERG: Okay. What, what, what's your  
9 definition of the very near future?

10          MR. OXENFORD: It could be just --

11          JUDGE STEINBERG: Sometime in the '90s?

12          MR. OXENFORD: No, it could be a matter of days.

13          JUDGE STEINBERG: Okay. I don't think there's any  
14 chance that this case will be resolved before that, unless  
15 there's some kind of an agreement between the Bureau and the  
16 applicants. Well, we'll just cross that bridge when we come  
17 to it. There's, there's been provision made in paragraph 18  
18 in the Hearing Designation Order as to what happens if that  
19 eventuality occurs -- in paragraph 18, subparagraph Roman  
20 numeral -- little Roman numeral two. That's ii. No, that's  
21 not -- that's the wrong one. But anyway it's in there  
22 somewhere.

23               Basically the case gets converted into a revocation  
24 proceeding and if that happens I guess we'll see what -- maybe  
25 I'll have another conference and we can see what we do from

1 | there. Okay. But I don't, I don't see why we can't just  
2 | proceed accordingly today.

3 I think it would be more orderly if we took the  
4 Bureau's exhibits first and then Bott's exhibits. The  
5 Bureau's -- in my view, and I, and I expressed this in a  
6 footnote in my order prior to Prehearing Conference, that I  
7 wanted in the record of this proceeding, the basic documents  
8 which caused this case to be set for hearing. I think that,  
9 that that belongs in the record and so I believe that the --  
10 we should take the Bureau's exhibits first and that kind of  
11 will set the stage for Mr. Bott's exhibits.

12 So let me turn matters over to Mr. Goldstein or Ms.  
13 Laden.

14 MR. GOLDSTEIN: Okay, Your Honor. The Bureau has  
15 previously exchanged its exhibits with counsel for Mr -- for  
16 Richard Bott II and with Your Honor and I gave copy -- an  
17 original and one copy to the Court Reporter this morning.

18 We'd like to have marked and identified as Mass  
19 Media Bureau Exhibit No. 1 a three-page document entitled  
20 Integration Statement, which was the statement -- integration  
21 statement filed by Richard P. Bott II in the proceeding for  
22 Blackfoot, Idaho.

23 JUDGE STEINBERG: Okay. The document will be so  
24 marked.

25 (Whereupon, the document referred to

1 as Mass Media Bureau Exhibit No. 1  
2 was marked for identification.)

3 MR. GOLDSTEIN: And I'd like to move its -- for its  
4 acc-- admission into the record.

5 JUDGE STEINBERG: Any objection?

6 MR. RILEY: I have no objection to Bureau Exhibit 1,  
7 Your Honor.

8 JUDGE STEINBERG: Okay. Exhibit 1 is received.

9 (Whereupon, the document referred to  
10 as Mass Media Bureau Exhibit No. 1  
11 was received into evidence.)

12 MR. GOLDSTEIN: Exhibit 2 is the -- Volume 2 of the  
13 transcript of the proceeding in Blackfoot, Idaho, Docket No.  
14 87-223, which occurred on December 7th, 1987. The document is  
15 the transcript its -- in its entirety and consists of 181  
16 pages. I trust Mr., Mr. Riley and Your Honor realize that we  
17 included the whole transcript, but only the portions with  
18 regard to Mr. Bott's testimony are relevant for the record  
19 purposes.

20 JUDGE STEINBERG: Okay. The, the document described  
21 will be so -- will be marked for identification as Bureau  
22 Exhibit 2.

23 (Whereupon, the document referred to  
24 as Mass Media Bureau Exhibit No. 2  
25 was marked for identification.)

1 MR. GOLDSTEIN: We'd move for its admission into  
2 evidence.

3 JUDGE STEINBERG: I, you know, I recognize pages 5  
4 through 10 and I'm speaking of the number -- the handwritten  
5 numbered pages on the bottom of the page -- concern matters  
6 that aren't relevant to today's hearing and the same thing  
7 with pages 98 through 181, except perhaps the portion 181 that  
8 says the record is closed. You know, just to show that the --  
9 that that was the whole hearing. So I, I recognize that those  
10 pages are really not relevant and they're not being relied  
11 upon. I don't see no harm in having them in there though.

12 MR. RILEY: Well, I haven't commented on it yet --

13 JUDGE STEINBERG: Okay.

14 MR. RILEY: -- and maybe you haven't asked for my  
15 position -- exhibit.

16 JUDGE STEINBERG: Oh I will. I'm just saying that  
17 I --

18 MR. RILEY: Okay.

19 JUDGE STEINBERG: I'm just saying I realize what the  
20 problem -- what that particular problem is. Okay. Now, I  
21 will ask Mr. Riley. Do you have any objection?

22 MR. RILEY: I have no objection to the receipt and,  
23 and simply not to piecemeal it, to the receipt of everything  
24 through page 92, Your Honor. That does include, as you said,  
25 some preliminary material with Judge Luton at the beginning.



1 I would object to the receipt of anything in this record after  
2 page 92. While I have skimmed that testimony of Mr. Sherwood  
3 Patterson and, and Ms. Claire whatever --

4 JUDGE STEINBERG: Ferguson.

5 MR. RILEY: -- Ferguson, I, I haven't the faintest  
6 idea what might be in there that might come back to be cited  
7 in this case. I think nothing and I see no reason for  
8 accepting it into the record of this case.

9 JUDGE STEINBERG: Okay. Here's what I'll do. I'll  
10 sustain the, I'll sustain the objection to pages 92 --

11 MR. RILEY: 93, Your Honor.

12 MR. GOLDSTEIN: 93, Your Honor.

13 JUDGE STEINBERG: Oh, yeah. Here we go.

14 MR. GOLDSTEIN: If it would facilitate matters, we  
15 can withdraw it. Whatever is easier for Your Honor.

16 JUDGE STEINBERG: It doesn't matter. Why don't --  
17 it, it really doesn't matter to me.

18 MR. RILEY: I, I don't care whether it's withdrawn  
19 as long as the objection to it is sustained so it can't be  
20 cited.

21 JUDGE STEINBERG: Yeah. Yeah, well, we'll strike  
22 pages 93 through 181, line 18. One -- page 181, where Judge  
23 Luton says, "The record is closed." I think should be in  
24 there to complete the picture.

25 MR. RILEY: Yeah. This is the hand numbering that

1 you're referring to on the pages --

2 JUDGE STEINBERG: Yes.

3 MR. RILEY: -- not that original transcript numbers.

4 JUDGE STEINBERG: Right. The hand -- I'm referring  
5 to the hand-numbered pages.

6 MR. RILEY: Right. Fine. Fine.

7 JUDGE STEINBERG: So -- okay. Just to, just to make  
8 it clear what, what is being received are pages -- hand-  
9 numbered pages 1 through 92 and page 181, lines 19 through the  
10 end.

11 (Whereupon, the document referred to  
12 as Mass Media Bureau Exhibit No. 2,  
13 pages 1 through 92 and page 181,  
14 lines 19 through the end, was  
15 received into evidence.)

16 JUDGE STEINBERG: And what is being rejected is --  
17 are pages 93 through 181, line 18.

18 (Whereupon, the document referred to  
19 as Mass Media Bureau Exhibit No. 2,  
20 pages 93 through 181, line 18, was  
21 rejected.)

22 JUDGE STEINBERG: If there is a hidden, hidden  
23 nugget in there, let the reviewing body find it. If there is  
24 a reviewing body. Look on the bright side. There won't be a  
25 reviewing body because what I do will be so cogent and correct

1 that nobody will appeal. Okay. Mr. Goldstein.

2 MR. GOLDSTEIN: Mass Media Bureau-proposed Exhibits  
3 No. 3 through 8, all relate to the materials which Your Honor  
4 discussed previously this morning and relate to footnote 1 of  
5 the Order Prior to Prehearing Conference. They all relate to  
6 what purportedly was the predicate for the addition of the  
7 issue and to comply with Your Honor's order, we are -- we will  
8 offer sequentially all of the documents into evidence. And  
9 we'll start with Mass Media Bureau Exhibit No. 3, which is the  
10 Petition to Deny, filed by Radio Representatives, Inc., in the  
11 -- to deny the assignment of that -- of Station KCVI-FM,  
12 Blackfoot, Florida (sic), and it was filed with the Commission  
13 on October 26th, 1992, and it consists in its entirety of 50  
14 pages.

15 JUDGE STEINBERG: Okay. I think you said Blackfoot,  
16 Florida, and it should be --

17 MR. GOLDSTEIN: Blackfoot, Idaho.

18 JUDGE STEINBERG: -- Blackfoot, Idaho.

19 MR. GOLDSTEIN: I'm sorry, Your Honor.

20 JUDGE STEINBERG: Okay. The document identified  
21 will be marked as Mass Media Bureau Exhibit 3.

22 (Whereupon, the document referred to  
23 as Mass Media Bureau Exhibit No. 3  
24 was marked for identification.)

25 MR. GOLDSTEIN: Now, I just want to note for your --

1 | there are some underlinings on page 1, which were inadvertent  
2 | and they were not part of that which was filed, but they do  
3 | not affect the substance of it, so that's really not part of  
4 | the official filing. The rest of it, I believe, is  
5 | unadulterated.

6 | JUDGE STEINBERG: Do you want to identify them all  
7 | or, or one at a time? Why don't you offer them one at a time.  
8 | It's easier that way. Do you have any objection --

9 | MR. GOLDSTEIN: I'd like to offer into evidence --

10 | MR. RILEY: Yes. I object to it, Your Honor.  
11 | Irrelevant. And I cite to you, Your Honor, your order denying  
12 | our request that Mr. Stewart appear in which you say in your  
13 | paragraph 4, the genesis of and the facts and circumstances  
14 | surrounding the Commission's adoption of the HDO are outside  
15 | the scope of the issue specified in that document.

16 | If this document is anything, it is a document that  
17 | goes into the genesis of the HDO. Exactly what you said, what  
18 | you said is outside of the scope of the issues. I realize  
19 | that your sentence there in denying our request for Mr.  
20 | Stewart might appear to be contradictory to your footnote 1,  
21 | but I don't think it really is.

22 | If Mr. Goldstein offers a document relevant to issue  
23 | 1, I won't object to that or that segment of it, as you  
24 | suggested in your footnote 1 of the order prior to prehearing.  
25 | You might be interested in segments of pleadings, not entire

1 pleadings. This document, however, contains no representation  
2 by Mr. Bott. It's a pleading file by a party adverse to the  
3 assignment application, can't contribute to resolution of  
4 issue 1. And I think falls precisely within the scope of your  
5 ruling on my request for Mr. Stewart.

6 JUDGE STEINBERG: Mr. Goldstein?

7 MR. GOLDSTEIN: Your Honor, we thought if we were  
8 going to give the entire sequence of documents, the predicate  
9 for the entire sequence should go in consistent with what is  
10 stated in the Hearing Designation Order and with the judge's  
11 order.

12 MR. RILEY: It seems to me what -- Your Honor, if I  
13 may comment again. It seems to me if the Bureau offers an  
14 exhibit, maintains relevance of it. Now, I know Mr. Goldstein  
15 is, is saying -- or I think I'm hearing him say that it is  
16 what you called for in your footnote 1 and he's not asserting,  
17 I think, particular relevance to the document. But if that's  
18 true, I think this ought to be a document within the scope of  
19 what you said at another point in your order denying our  
20 request for Mr. Stewart which is, parties may seek to have  
21 official notice taken of documents of this nature.

22 There's a difference between requesting official  
23 notice of a document in the Commission's records and  
24 maintaining that a document is relevant to an issue in a  
25 proceeding and therefore should be received as an exhibit.

1 But if it ought to be received as an exhibit, somebody ought  
2 to be able to withstand examination on it. We believe it  
3 should be Mr. Stewart.

4 I have, however, since you ruled that Mr. Stewart  
5 was an inappropriate witness among other things because of the  
6 genesis of the adoption of the HDO was outside the scope of  
7 the issue, and I tend to agree with you on that. You also  
8 said that Mr. Stewart has no personal knowledge thereof. I  
9 went back and looked at the news release adopted by the  
10 Commission -- not adopted by, but released by the Commission,  
11 when this case was set for hearing and I believe I've  
12 identified the Commission person who does have personal  
13 knowledge. I think it's Joel Rosenberg in the FM branch.

14 Mr. Rosenberg, in the news release of June 4, is  
15 said to be the Mass Media contact. I know of my personal  
16 knowledge that Mr. Rosenberg works on complex matters in the  
17 FM branch. He is an attorney. He reviews pleadings. He  
18 writes draft opinions frequently to my knowledge those  
19 pleadings -- those opinions are in fact what go to the  
20 Commission, and the Commission staff does not review the  
21 underlying pleadings.

22 This case, like many others, was adopted on  
23 circulation. I think that Mr. Rosenberg is that person who  
24 has the personal knowledge Mr. Stewart lacks. If, if these  
25 documents -- this exhibit and one or two others, are received

1 in evidence over my objection, Your Honor, I, I may very well  
2 request that a subpoena be issued for Mr. Rosenberg and I  
3 think it would be appropriate to question him on what in this  
4 document is relevant to the issue designated.

5 JUDGE STEINBERG: Okay. I, I don't need anymore.  
6 The exhibit is going -- will be received for official notice  
7 purposes.

8 (Whereupon, the document referred to  
9 as Mass Media Bureau Exhibit No. 3  
10 was received into evidence.)

11 JUDGE STEINBERG: I think, I think when -- I think  
12 it's important that the record contain the background  
13 documents which caused this case to be designated for hearing.  
14 That is very separate and distinct from basically putting  
15 somebody on the stand and cross-examining that individual as  
16 to perhaps the reasons why the case was designated for  
17 hearing. The, the subjective reasons.

18 I'm, I'm not going to allow a collateral attack on  
19 the accuracy or inaccuracy of the Hearing Designation Order  
20 during the course of this hearing. And I perceived your  
21 request for Mr. Stewart to be of that nature. That you were  
22 going to put somebody up on the stand and rake him over the  
23 coals because of a -- of, of, of an alleged inaccuracy in the  
24 Hearing Designation Order.

25 I've read all of these documents, MMB Exhibits 3, 4,

1 5, 6, 7, 8 and I know what they say and I've read the HDO and  
2 I know what it says and whether it's accurate or inaccurate,  
3 we're having a hearing and you can prove at the hearing  
4 through Mr. Bott what you intend to prove. What the facts are  
5 and let whatever the facts are, the facts are.

6 MR. RILEY: Your Honor, but the --

7 JUDGE STEINBERG: And -- but I don't, I don't con --  
8 I don't perceive that my ruling denying the subpoena for Mr.  
9 Stewart or Mr. Stewart's cross-examination to be inconsistent  
10 with, with my ruling today. These are -- so 3 is received for  
11 official notice purposes.

12 Let me just note for the record, Mr. Alpert just  
13 walked into the hearing room and Mr. Alpert is the author of  
14 this document that we're just talking about, at least his  
15 signature's on it. So maybe, maybe when we go off the record  
16 I'll let you put him on the stand.

17 MR. RILEY: I wouldn't want to put Mr. Alpert on the  
18 stand. I've read these documents, Your Honor, and there's not  
19 a grain of common sense in them.

20 JUDGE STEINBERG: Well, okay. Let's go onto  
21 number 4.

22 MR. GOLDSTEIN: I'd like to have marked for  
23 identification Mass Media Bureau Exhibit No. 4, which is a 12-  
24 page document entitled, "Opposition to Petition to Deny,"  
25 filed in the assignment proceeding for the construction permit



1 of unbuilt station KCVI-FM, Blackfoot, Idaho. It was received  
2 at the Commission, according to the stamp, on November 10th,  
3 1992, and I would like to have it received for official notice  
4 purposes on the same basis that Your Honor received Exhibit  
5 No. --

6 JUDGE STEINBERG: Let me first identify the document  
7 described. It will be identified as Bureau Exhibit No. 4 and  
8 it's offered, Mr. Riley. Same objection?

9 MR. RILEY: Well, I -- except for the statement that  
10 Mr. Bott appended to the document --

11 JUDGE STEINBERG: Yeah.

12 MR. RILEY: -- which we exchanged ourselves as an  
13 exhibit --

14 JUDGE STEINBERG: Right.

15 MR. RILEY: -- I have the objection to what prefaces  
16 the -- what would be pages 1 through 8, same objection.

17 JUDGE STEINBERG: Okay.

18 MR. RILEY: I -- Your Honor, I don't want to extend  
19 it, because I, I know what your ruling will be. I do want to  
20 say this, though, just to leave the subject alone after this.  
21 We didn't call Mr. Stewart to lodge -- or launch a collateral  
22 attack on the HDO. Mr. Bott is charged with making a  
23 misrepresentation to the Commission. There are two sides to  
24 that equation. If he made it, someone received it. I have  
25 searched the record and I don't find it there, but somebody

1 | perceived a misrepresentation had been made.

2 |           To meet my burden of going forward and my burden of  
3 | proof, I sought to put on the stand a responsible Commission  
4 | official in order to elicit from that official what I believed  
5 | would be the testimony that that official could not identify  
6 | that misrepresentation. That would be the other side of the  
7 | equation. Mr. Bott denies he made one. Responsible  
8 | Commission official acknowledges he doesn't know of one. It  
9 | was not to launch a collateral attack. It was to meet my  
10 | burden, but enough said.

11 |           JUDGE STEINBERG: Okay. The, the objection will be  
12 | overruled for the same reasons I, I stated with respect to  
13 | No. 3 and Exhibit 4 is received for official notice purposes.

14 |                               (Whereupon, the document referred to  
15 |                               as Mass Media Bureau Exhibit No. 4  
16 |                               was marked for identification and  
17 |                               received into evidence.)

18 |           MR. GOLDSTEIN: The Bureau would like to have marked  
19 | for identification as Mass Media Bureau Exhibit No. 5 a 102-  
20 | page document which is captioned "Reply to Opposition to  
21 | Petition to Deny," filed in the assignment of Station KCVI-FM,  
22 | Blackfoot, Idaho, proceeding, was received at the Commission  
23 | on November 23rd, 1992.

24 |           JUDGE STEINBERG: Okay. The document described will  
25 | be so -- will be marked for identification as Bureau Exhibit

1 5.

2 (Whereupon, the document referred to  
3 as Mass Media Bureau Exhibit No. 5  
4 was marked for identification.)

5 JUDGE STEINBERG: And it's -- and I presume it's  
6 being offered.

7 MR. GOLDSTEIN: It is being offered, Your Honor.

8 JUDGE STEINBERG: Mr. Riley?

9 MR. RILEY: Your Honor, as to this document I obj--  
10 object to it in its entirety and it, it -- again, it contains  
11 no representation by Mr. Bott. Moreover, it's a document to  
12 which Mr. Bott obviously filed no reply pleading within the  
13 pleading cycle. His attorneys filed a very brief corrective  
14 comment, which the Commission in footnote 1, I think, or 2 of  
15 the Hearing Designation Order, acknowledged and made one  
16 correction from it. But Mr. Bott within the acknowledged  
17 pleading cycle, which we're all acutely aware of, did not file  
18 a response to this.

19 It, it is unfortunate that the Commission at all  
20 adverted to this in the HDO, because it did so in a way that  
21 said, among other things, Mr. Bott didn't contradict this.  
22 But in the pleading cycle, he --

23 JUDGE STEINBERG: Well, in a normal pleading cycle  
24 he wouldn't have had a response to it anyway.

25 MR. RILEY: Precisely. But the HDO overlooks that

1 in its haste to designate it for hearing. I object to this.  
2 What -- if, if there's -- and I would object to taking  
3 official notice of this, but I really need to know, I think,  
4 to know how to proceed further. What, what is the  
5 significance of something being received for official notice  
6 purposes as distinguished from a finding that, in fact, it is  
7 relevant as an exhibit in the proceeding?

8 JUDGE STEINBERG: Official notice purposes are  
9 basically a document was filed on such and such a date and the  
10 document stated. Period.

11 MR. RILEY: Okay. And it's not for the truth of  
12 what's in the document?

13 JUDGE STEINBERG: No.

14 MR. RILEY: Okay. All right. Well, you've heard  
15 my --

16 JUDGE STEINBERG: No, it's for instance -- well, not  
17 for instance. That's enough of an answer.

18 MR. RILEY: Yeah. That's fine.

19 JUDGE STEINBERG: It's basically it's, it's, it's  
20 something that -- I mean, you can't deny that this document  
21 was -- that, that this document with this particular title --

22 MR. RILEY: Yeah.

23 JUDGE STEINBERG: -- in this particular case was  
24 filed with the Commission on this particular date --

25 MR. RILEY: Precisely.

1 JUDGE STEINBERG: -- and that these -- this  
2 particular document states this.

3 MR. RILEY: I -- you're, you're, you're quite right.

4 JUDGE STEINBERG: Okay. Exhibit 5 will be received  
5 for official notice purposes.

6 (Whereupon, the document referred to  
7 as Mass Media Bureau Exhibit No. 5  
8 was received into evidence.)

9 MR. GOLDSTEIN: The Bureau would like to have  
10 marked, marked for identification an 11-page exhibit, caption  
11 "Request for Leave to Respond and Response," filed in the  
12 assignment of construction permit -- preceding the assignment  
13 of construction permit of unbuilt station KCVI-FM, Blackfoot,  
14 Idaho. There's a date received stamp of December 8th, 1992.  
15 The Bureau would also offer this into evidence.

16 JUDGE STEINBERG: Okay. The document described --

17 MR. GOLDSTEIN: For official notice purposes  
18 consistent with your prior rulings.

19 JUDGE STEINBERG: Document described will be marked  
20 as Bureau Exhibit 6 and it's being offered --

21 MR. RILEY: Essentially the same objection, Your  
22 Honor

23 JUDGE STEINBERG: Okay. And then the same ruling.  
24 It's -- No. 6 is received for official notice purposes.

25 (Whereupon, the document referred to

1 as Mass Media Bureau Exhibit No. 6  
2 was marked for identification and  
3 received into evidence.)

4 MR. GOLDSTEIN: The Bureau would mark for  
5 identification Mass Media Bureau Exhibit No. 7, which is a 10-  
6 page document captioned, "Supplement to Petition to Deny," in  
7 the preceding for assignment of the construction permit for  
8 unbuilt station KCVI-FM, Blackfoot, Idaho, with a date  
9 received stamp of May 10 -- May 14th, 1993

10 JUDGE STEINBERG: Doc--

11 MR. GOLDSTEIN: And we would like to offer it into  
12 evidence at this time, Your Honor.

13 JUDGE STEINBERG: The document described will be  
14 marked for identification as Bureau Exhibit 7 and it's being  
15 offered.

16 (Whereupon, the document referred to  
17 as Mass Media Bureau Exhibit No. 7  
18 was marked for identification.)

19 MR. RILEY: Your Honor, this one I, I, I object to  
20 for the bases stated before, but for one additional reason.  
21 Unless I've missed it, this document's not referred to at all  
22 in the HDO. Now, I, I may have missed it, but I think it's  
23 not.

24 You recall that it was filed this past spring just a  
25 week or so, maybe two weeks, before the HDO was adopted. Mr.

1 Rosenberg had undoubtedly prepared the HDO and sent it forward  
2 to the Commission well in advance of that as we know how the  
3 agenda moves. There's no showing anywhere I think that this  
4 document had anything to do with the adoption of this HDO.

5 MR. GOLDSTEIN: Your Honor, the reason we are  
6 offering it is we inferred from your order that it would be  
7 appropriate to have all documents that were in the pleading  
8 cycle with respect to the Petition to Deny and therefore it's  
9 being offered.

10 MR. RILEY: It's not in the pleading cycle, Your  
11 Honor. The cycle is petition, opposition, reply.

12 MR. GOLDSTEIN: Right. But it is, it is a  
13 supplement to the Petition to Deny, which was the predicate  
14 for all the pleadings which we have discussed.

15 MR. RILEY: Well, the Petition to Deny --

16 MR. GOLDSTEIN: And we're offering it --

17 MR. RILEY: -- Your Honor, was the perhaps, perhaps  
18 a predicate, but this document isn't. It came in long after  
19 the course of events here had been settled upon and it's not  
20 anywhere cited in the HDO.

21 JUDGE STEINBERG: Okay. I'm, I'm, I'm of mixed  
22 feelings about this. Number one, it, it is something that I  
23 can take official notice of since it was filed. That's on the  
24 one hand, but on the other hand if it's not mentioned in the  
25 HDO, it's -- doesn't seem to have specifically been a cause of

1 the, of the case to be designated for hearing, even though it  
2 was part of the same -- let me, let me -- I'll receive it for  
3 official notice purposes and then I don't see that that hurts  
4 anything. So I'll, I'll receive Exhibit No. 7 for the same  
5 purpose and I overrule the objection.

6 (Whereupon, the document referred to  
7 as Mass Media Bureau Exhibit No. 7  
8 was received into evidence.)

9 MR. GOLDSTEIN: The Bureau would like to have marked  
10 for identification its Exhibit No. 8, which is a one-page  
11 document consisting of a letter from Harry C. Martin, counsel  
12 for Richard P. Bott, to Roy J. Stewart, Chief, Mass Media  
13 Bureau, which is dated May 19th, 1993, and was received at the  
14 Commiss-- at the Audio Services Division on May 19th.

15 This again, Your Honor, is the same position with  
16 respect to the prior document. It's to complete what we  
17 perceive to be the entire cycle.

18 JUDGE STEINBERG: Same objection?

19 MR. RILEY: Yeah, Your Honor, and I'll tell you why.  
20 I, I really --

21 JUDGE STEINBERG: Well, let me, let me identify it.  
22 I didn't formally identify it.

23 MR. RILEY: All right, sir. Sure.

24 JUDGE STEINBERG: The document that Mr. Goldstein  
25 described is marked for identification as Bureau Exhibit 8.



1 (Whereupon, the document referred to  
2 as Mass Media Bureau Exhibit No. 8  
3 was marked for identification.)

4 MR. RILEY: I -- Your Honor, my, my problem with  
5 both 7 and 8 is this, that neither one is adverted to in the  
6 HDO. I, I recognize that citing -- receiving something for  
7 initial not -- official notice doesn't mean that it's being  
8 accepted for the truth of its contents, but I don't -- I would  
9 hate to have a finding made that Exhibit 7 said that Mr. Bott  
10 was an armed bank robber and Exhibit 8 shows that Mr. Bott  
11 didn't respond to the charge.

12 JUDGE STEINBERG: Well, Mr. Bott said that it's,  
13 it's untimely, repetitive, presents no new facts, and was  
14 interposed to delay only, so I guess he, he's perhaps denying  
15 he's an armed bank robber. I think you can --

16 MR. RILEY: I don't think he's --

17 JUDGE STEINBERG: -- can infer that.

18 MR. RILEY: -- he's -- well, what you have here is  
19 counsel's letter saying that. I understand what your ruling  
20 will be, Your Honor. I, I, I suppose anything in the  
21 Commission's vaults could be -- you could be requested to take  
22 official notice of virtually anything in the vaults, but  
23 your --

24 JUDGE STEINBERG: Sure, I could. I could be, I  
25 could be asked to take official -- I could be asked to -- I'd